



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue
Seattle, Washington 98101

August 11, 1994

Julie Sellick
Unit Supervisor
Solid and Hazardous Waste Program
Northwest Regional Office
Washington Department of Ecology
3190 160th SE
Bellevue, Washington 98008

Re: EPA Identification No. WAD 00081 2917
Pier 91 Facility

Dear Julie:

I am writing to request some short-notice, short-term, but somewhat intensive policy assistance from Ecology on the Pier 91 corrective action (CA) permit. On July 26, 1994, EPA and Ecology met with the Pier 91 Permittees (BEI and the Port of Seattle) to discuss the anticipated transition of the CA permit to a MTCA Order. Ecology informed the permittees that a MTCA Order process could not be assured given the current hiring freeze, but the Port of Seattle responded that they are using high-level lines of communication to obtain a pre-paid position at Ecology. Making a transition from a RCRA CA permit to a MTCA Order is complicated, and the meeting with the permittees bore that conclusion out further.

The primary reason I am requesting Ecology assistance is that, in all likelihood, the CA permit will be issued under State authority. (The draft corrective action permit will be public noticed approximately late August, prior to Ecology receiving authorization for corrective action, but will likely be finalized after Ecology receives authorization). Below, I outline some of the major transition issues to give you a sense of the areas in which the permit could benefit from Ecology input. Resolution of most of these issues requires policy and legal expertise regarding authorization mechanics more than it does technical program knowledge.

A) Should the CA permit include language to anticipate future incorporation of a MTCA order (automatic incorporation language) or, instead, should the Order be incorporated into the permit via a permit modification? I favor the former approach because it is too difficult to anticipate all the changes required by the Order.

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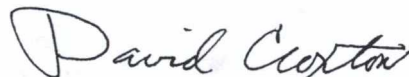
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B) How consistent does the CA permit need to be with a MTCA Order? For example, the permit does not include any Corrective Measures Study requirements, yet I understand MTCA Orders must. The consistency issue raises two concerns for the Permittees: 1) That the Permittees will sign-up to one set of tasks under the permit, only to have the tasks change dramatically under the Order. They want assurances that won't happen. 2) That signing-up to a permit may impinge on the Permittees ability to recover costs from PLPs under MTCA. Specifically, that a permit differs substantially from an "independent clean-up" action and therefore activities performed pursuant to the permit may not legally meet the definition for joint and severable liability under MTCA. Currently, the draft permit is relatively standard and does nothing to address this issue.

C) Bearing in mind that there are two different definitions for facility at Pier 91 (one for the TSD, one for corrective action), how should the operating and CA permit be associated. Should the two permits remain separate or should the operating permit be amended to incorporate the CA permit? As far as EPA is concerned it is easier to keep them separate; however, Ecology may have an interest in combining them.

As you can appreciate, this has not been an easy process. Call me (553-8582) to discuss if, and how, you think Ecology could get involved. Thanks.

Sincerely,

A handwritten signature in cursive script that reads "David Croxton".

David Croxton
RCRA Permit Writer

cc: G. Tritt, NWRO
C.P. Wang, NWRO
E. McKenna, EPA-ORC